



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

WILL WILSON
ATTORNEY GENERAL

April 12, 1962

Honorable Ammond G. Schwartz
County Attorney
Lavaca County
Hallettsville, Texas

*With drawn
see WD file
1962*

Opinion No. WW-1308

Re: Whether a county surveyor may make private surveys for compensation of lands in his county without being licensed under Article 5282a, V.C.S.

Dear Mr. Schwartz:

You have requested an opinion on the following subject:
May a duly elected and acting county surveyor survey private lands for compensation without qualifying as a registered public surveyor pursuant to the Registered Public Surveyors Act of 1955?

The 54th Texas Legislature enacted the Registered Public Surveyors Act of 1955, codified as Article 5282a, Vernon's Civil Statutes. One indication of the legislative intent in the enactment is found in the Act's Emergency Clause (Section 12), which reads as follows:

"The fact that many persons are now engaging in the practice of Public Surveying without adequate preparation and qualification therefor, with resulting confusion to persons dealing with such persons, creates an emergency and imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended . . ."

Section 2(b) of the Act defines public surveying as:

". . . the science or practice of land measurement according to established and recognized methods engaged in and practiced as a profession or service available to the public generally for compensation, and comprises the determination by means of survey, of the location or relocation of land boundaries and land boundary corners; the calculation of area and the preparation of field note

description of surveyed land; the preparation of maps showing the boundaries and areas of the subdivision of tracts of land into smaller tracts; the preparation of official plats or maps of said land and subdivisions thereof; and such other duties as sound surveying practice would direct."

Section 2(b) also states that a public surveyor is any person engaged in the public surveying defined in the Act, and who is employed as a surveyor or who holds himself out to the public as such. Section 6 requires the registration of any person, except those exempted from the Act by Section 3, who engages or continues in the practice of public surveying after January 1, 1956. Section 8 provides that after January 1, 1956:

"... any person who shall practice, or offer to practice, the profession of Public Surveying in this State without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own the Certificate of Registration or the seal of another, . . . shall be fined not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500), or be confined in jail for a period not exceeding three (3) months, or both. Each day of such violation shall be a separate offense."

Section 3 states that the provisions of the Act shall not apply, among others, to a "County Surveyor acting in his official capacity as authorized by law." (Emphasis added)

The office of county surveyor is created by Section 44 of Article XVI of the Constitution of Texas, which states:

"The Legislature shall prescribe the duties and provide for the election by the qualified voters of each county in the State, of a county treasurer and a county surveyor, who shall hold their office for two years, and until their successors are qualified; and shall have such compensation as may be provided by law." (Emphasis added)

Articles 5283-5298, Vernon's Civil Statutes, relate to the office of County Surveyor. As stated in Attorney General Opinion No. O-3940 (September 15, 1941), neither the Constitution nor the statutes prescribe any particular qualifications or require a county surveyor to be a licensed land surveyor.

Article 5289 refers to the duty of a county surveyor to survey land, as follows:

"If any county surveyor fails, neglects or refuses, when the amount of lawful surveying fees of any location of land may be tendered to him by any person legally entitled to the survey, to make or cause such survey to be made within one month after such tender, he and his sureties shall be liable on his official bond to such injured parties in the amount of damages or injuries said parties may sustain by reason of such neglect, refusal or failure." (Emphasis added)

The duty and authority of a county surveyor with respect to the actual survey of land is epitomized by Article 5299, Vernon's Civil Statutes, which states:

"All surveys of public lands shall be made by authority of law, and by a surveyor duly appointed, elected or licensed, and qualified." (Emphasis added)

Considered together, these two statutes indicate that the survey of public land, as opposed to private land, is the statutory duty of the county surveyor. Since the survey of private lands for compensation is not a statutory duty of county surveyors, the logical conclusion is that a county surveyor who engages in such practice does so in a capacity other than his official capacity as authorized by law. The conclusion necessarily follows, from this, that the survey of private lands by a county surveyor is not within the exception listed in Section 3 of the Registered Public Surveyors Act of 1955, since that section speaks only of the actions of a county surveyor which are "in his official capacity as authorized by law."

This conclusion is strengthened by the fact that the Registered Public Surveyors Act of 1955 provided three different methods for qualifying for a certificate of registration. The first two methods of qualifying were for the benefit of persons actually engaged in public surveying prior to the effective date of the Act; both methods contain lesser requirements for qualification than the third method; and both contain cut-off dates (1 and 5 years respectively) after which only the third method of qualification may be utilized.

SUMMARY

A county surveyor who surveys private lands for compensation is engaged in the practice of public surveying as defined in the Registered Public Surveyors Act of 1955, and a county surveyor so engaged is required by law to possess a certificate of registration issued by the State Board of Registration for Public Surveyors.

Yours very truly,

WILL WILSON
Attorney General of Texas

By *F. R. Booth*
F. R. Booth
Assistant

FRB:zt:wb

APPROVED:

OPINION COMMITTEE

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REVIEWED FOR THE ATTORNEY GENERAL

BY: Houghton Brownlee, Jr.